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Title IX Appeal Officer Training

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# Scope

Training for those serving as Title IX Appeal Officers in matters involving allegations of Sexual Misconduct as defined by the Amendments to the 2020 Code of Federal Regulations

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# Some Initial Questions

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# Is this a legal proceeding?

No. Live Title IX hearings as discussed in this training are NOT civil or criminal legal proceedings. They are internal investigative processes and have only internal administrative repercussions. Court rules, including Rules of Evidence, do not apply in these proceedings.

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# What help and resources will I have?

In addition to this training, you will have access to Valencia policies and materials relevant to the case in which you are involved. Should you need clarification or have process questions, you can consult with Valencia's Title IX Coordinator or Valencia's General Counsel. All determinations made as to the merit of the allegations and the decision regarding the responsibility of the Respondent(s), however, will be your own.

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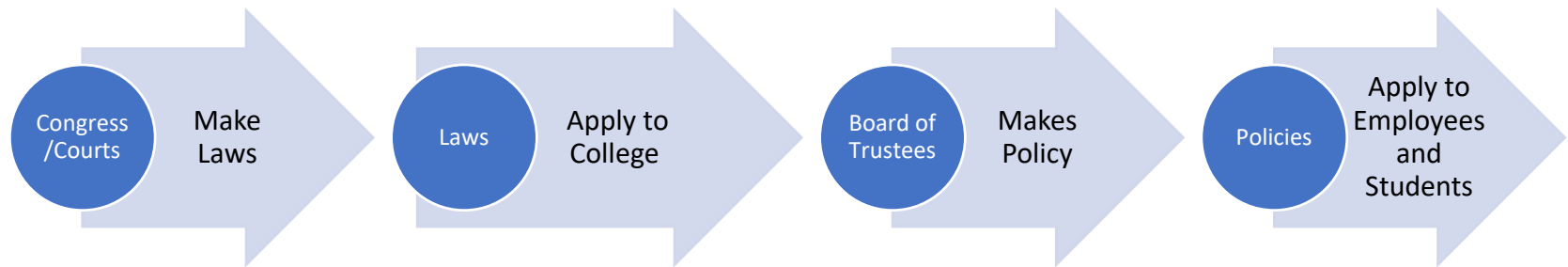
# The Process

## Part I Overview

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# Which Rules Apply?



You are reviewing appeals regarding determinations of violations of Valencia's policy, NOT of external laws

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# Applicable College Policies

- Policy 6Hx28:2-01 Discrimination, Harassment and Related Conduct
- Policy 6Hx28:8-03 Student Code of Conduct
- Policy 6Hx28:3E-08 Disciplinary Action

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# Policy 2-01

Prohibits discrimination on the basis of sex in education programs and activities and includes:

- *Quid pro quo* harassment demonstrated by an employee
- Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access
- Title IX Sexual Assault, Title IX Interpersonal Violence, and/or Title IX Stalking

Provides for an investigation and ultimate finding as to whether allegations of prohibited conduct are supported by a preponderance of the evidence

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# Policy 2-01

As an Appeal Officer, you do not perform the investigation

- Those functions are performed by Valencia's EO team and the results are provided to you and to all parties

Complainants can appeal findings of not-responsible

Respondents can appeal findings of responsibility

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# Policy 2-01

## Limited Grounds for Appeal

- New information that could affect the finding of the Title IX Hearing Officer and that was not reasonably available through the exercise of due diligence at the time of the investigation or hearing; and/or
- Material deviation(s) from written procedures that significantly affected the outcome; and/or
- Information to suggest that the individual(s) involved in the investigation or hearing possessed a conflict of interest or bias that affected the outcome.

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# Policies 8-03 and 3E-08

If and when there is a finding that someone has violated Policy 2-01 by engaging in prohibited conduct, these policies provide the mechanism for remedying the effects of the conduct and ensuring that it does not recur

Students may be subject to any possible sanction as outlined in the Student Code of Conduct policy

Employees may be subject to any possible discipline as outlined in the Disciplinary Action policy

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## **Policies 8-03 and 3E-08**

If a determination of responsibility imposes a sanction of suspension or expulsion, an appeal may include a challenge of the sanction on the bases listed previously or on the grounds that the sanction is excessive for the particular student in the particular circumstances presented. Mere dissatisfaction or disagreement with the finding of cause or disciplinary action is not a valid basis for appeal.

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# The Process

## Part II Prohibited Conduct

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# Kinds of Cases You May Review

- Title IX sexual harassment, Title IX sexual assault, Title IX stalking, or Title IX interpersonal violence
  - Involving students, employees, or a combination
- Quid Pro Quo harassment by employees

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# Title IX Sexual Assault

As defined in the Clery Act, including any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

A. Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

B. Incest—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

C. Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

D. Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.

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[Valencia Policy 6Hx28:2-01](#)

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# Title IX Interpersonal Violence

Includes the definitions of Domestic Violence and Dating Violence as defined in the Violence Against Women Act (VAWA)

Domestic Violence is a pattern of abusive behavior in a relationship that is used by one partner to maintain power and control over another current or former intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures, or wounds someone.

Dating Violence is violence and abuse committed by a person to exert power and control over a current or former dating partner. Dating violence often involves a pattern of escalating violence and abuse over a period of time. Dating violence covers a variety of actions and can include physical abuse, physiological and emotional abuse, and sexual abuse. It can also include “digital abuse”, the use of technology, such as smartphones, the internet, or social media, to intimidate, harass, threaten, or isolate a victim.

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[Valencia Policy 6Hx28:2-01](#)

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# Title IX Stalking

As defined in the Violence Against Women Act (VAWA), stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking is dangerous and can often cause severe and long-lasting emotional and psychological harm to victims. Stalking often escalates over time and can lead to domestic violence, sexual assault, and even homicide. Stalking can include frightening communications, direct or indirect threats, and harassing a victim through the internet.

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[Valencia Policy 6Hx28:2-01](#)

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# Title IX Sexual Harassment

Misconduct based on sex that is severe and pervasive and objectively offensive conduct, effectively denying a person equal educational access, and/or an employee conditioning the provision of an aid, benefit, or service to a student on the basis of participation in Title IX Sexual Misconduct.

*\*\*This is not the same definition of sexual harassment utilized in Title VII cases or in Florida's anti-discrimination laws.*

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[Valencia Policy 6Hx28:2-01](#)

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# The Process

## Part III Appeal Officer Role

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# What Does an Appeal Officer Do?

- Review appeal to determine if it falls within limited grounds
- You can request the Investigator do an additional investigation and/or the Hearing Officer hold an additional Title IX Hearing if there is applicable new information or if there were deviations in the process that significantly affected the outcome
- You have 20 calendar days to decide and notify all parties in writing
- You may whole or in part endorse or reject the finding of responsibility and the sanction issued

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# What Doesn't an Appeal Officer Do?

- Respond to information not raised or could have been raised but were not
- Address any interim protective measures assigned
- Review the merits of the case

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# What Doesn't an Appeal Officer Do?

- Re-investigate the case
- Vote your conscience or use this as a platform to change policy
- Determine if the preponderance of evidence standard was met
- Entertain anything beyond the limited grounds for appeal

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# Do You Have a Conflict of Interest?

Everyone involved in the Title IX process must support an objective evaluation of the evidence.

Objectivity includes the absence of any personal or professional interest that affects your ability to be fair and impartial to all parties in the proceeding and that actually affects the outcome of the proceeding.

Before you serve as an Appeal Officer, you must ensure that you do not have a Conflict of Interest.

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# Things That Could Be A Conflict of Interest

- A family relationship with the parties, their advisors, or anyone who may serve as a witness in the proceeding
- A personal relationship with a party, an advisor, or a witness that leads you to give that individual advantage or disadvantage in the proceeding
- A business relationship with the parties, their advisors, or anyone who may serve as a witness in the proceeding

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# Things That Could Be A Conflict of Interest

- Giving any financial assistance or gifts to a party or a witness in the proceeding
- Receipt of any financial assistance or gifts to a party of witness in the proceeding
- Prior knowledge about a party outside of what is learned in the proceeding that bears on your decision of responsibility

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# Conflict of Interest

- If you think you may have a conflict of interest, advise the Title IX Coordinator immediately

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# General Ethical Considerations

Beyond conflicts of interest, as an impartial decision-maker an Appeal Officer must approach their service impartially and without any prejudice

You must set aside impressions or biases you have from movies, TV, news, other cases in which you have been involved, and personal opinions

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# Ethical Considerations

**DO NOT: Rely on sex stereotypes**

“Women are manipulative and they lie.”

“Real men are aggressive.”

“A lady wouldn’t put herself in that position.”

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# Ethical Considerations

**DO NOT: Make credibility determinations based solely on the sex or gender of a party**

“I’m going to believe the woman because women have been ignored for too long in other cases and we need to balance things.”

“He was a boy scout so he is a man of honor, even though her version of events seems plausible.”

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# Ethical Considerations

**DO NOT: Make credibility determinations based solely on a person's status as a reporting or responding party in a matter**

“Anyone who would file a complaint about something like this is crazy.”

“If this woman would go so far as to file a formal complaint, then he must have done it.”

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# Ethical Considerations

**DO: Approach the process with an open mind and without any preconceived notions**

**Look at every decision you make as an objective evaluation of the facts and policies**

**Treat every participant and witness with respect**

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# The Process

## Part IV Nuts & Bolts

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# Formal Complaint

In circumstances when a Complainant wishes the College to take action under this policy, they must submit a formal, written complaint.

The formal complaint is a document submitted by the Complainant alleging Title IX Sexual Misconduct under College policy and indicates a request by the Complainant that the College investigate the allegations.

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# Formal Complaint

Formal complaints will be investigated unless:

- The allegations in a formal complaint do not meet the definition under Title IX Sexual Misconduct under the policy or did not occur within the College's Educational Program or Activity
- The Complainant withdraws the request to investigate
- The Respondent is no longer enrolled or employed by the College

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# Investigation

After receipt of a formal complaint and determination to proceed under the Title IX procedures based on the information provided in the formal complaint, the investigator will:

- Meet with the Complainant and Respondent with their chosen Advisors and any reported witnesses
- Gather any evidence provided by involved parties
- Create an investigation report outlining the information provided in the course of the investigation

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# Investigation Report

The investigation report will include:

- Summary of allegations
- Timeline of events
- Summary of meetings with parties and witnesses
- Any evidence provided by the parties
- Analysis of information provided

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# The Title IX Hearing Questions Presented

- Did the prohibited conduct occur as alleged?
- If the conduct did occur, does that conduct violate the College's policy?
- If the policy was violated, what is the appropriate action to remedy the effects of the conduct and prohibit its recurrence?

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# The Title IX Hearing Standard of Proof

In all Title IX hearings, determinations are made according to the preponderance of the evidence standard.

Other ways of expressing this standard:

- more likely than not
- 50.1% of the evidence
- the evidence is equal but one party is more credible than the other

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# The Title IX Hearing Decision

- The decision is not made at the Title IX hearing
- The decision is made after the Title IX Hearing Officer has considered all of the relevant evidence and college policies, and will be communicated to the parties in writing

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Questions?